Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-6341

DAVID D. MARTIN,

Petitioner,

versus

STATE OF LOUISIANA,

Respondent.

REPLY BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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The State of Louisiana, respondent herein, prays that this court deny the issuance of Writ of Certiorari, to review the judgment and decision of the Supreme Court of the State of Louisiana affirming the convictions and upholding the death sentence of David D. Martin for four counts of first degree murder in the Seventeenth Judicial District Court, Lafourche Parish, Louisiana.

STATEMENT OF FACTS

One rainy August 11th in 1977, Wayne Melancon, a wireline operator in Houma, Louisiana, picked up the defendant David Dene Martin and his wife as they walked in the rain. This was the first time that Wayne Melancon had seen the defendant. Melancon helped the defendant Martin and Mar-

tin's wife with their groceries, and took them to his house. While they were at the home of Melancon, Melancon showed Martin his gun collection. Among the guns in the collection was a Colt Python .357 magnum, blue steel with a four inch barrel. He especially showed this weapon to Martin, and he showed Martin where he kept it. During the evening of August 12, 1977, the next day, the home of Wayne Melancon was burglarized and the Colt Python .357 magnum, blue steel with a four inch barrel was stolen. The gun was loaded with split hollow point bullets, custom made. On the morning after the burglary Melancon gave to Major Aubrey Authement of the Houma Police Department a spent shell casing and a slug that had been fired from the stolen Colt Python .357 magnum, blue steel, with a four inch barrel. Wayne Melancon is a convicted felon.

The defendant on August 14, 1977 borrowed a 1968 White Plymouth Station Wagon from Mr. Donald Culpepper. The defendant then drove the borrowed station wagon to the home of Chester M. Golden and showed him a blue steel .357 magnum Colt Python with a four inch barrel and attempted to obtain additional ammunition from Chester Golden. The gun was loaded with split hollow point ammunition at the time. The defendant was sent by Chester Golden to the home of Tommy Ledet where the defendant purchased additional ammunition. The defendant at the home of Tommy Ledet obtained additional ammunition, and showed the gun and the split hollow bullets to Tommy Ledet.

David Dene Martin then drove to a trailer in Lafourche Parish and shot and killed Bobby Todd, Terry Hebert, Sandra Brake, and Anna Tierney. David Martin the defendant then left the scene and told of the murders to: Chester M. Golden,

Pamela Wilson, Donna Gary, and Raymond Rushing. When David D. Martin told of the crime to Donna Gary he also gave to her expended shell casings. These casings were .357 in caliber and were given by Donna Gary to Major Authement of the Terrebonne Parish Sheriff's Office.

The Louisiana State Police Crime Lab also found that the shell casings given to Donna Gary by the defendant and the one turned in by Wayne Melancon to the Houma Police were matched as having been fired from the same gun. The bullet given to the police by Wayne Melancon was compared with bullets taken from the bodies of Robert Todd, Sandra Brake, Terry Hebert, and found to have been fired from the same weapon.

The Louisiana State Police Crime Lab found blood in the station wagon borrowed by the defendant from Mr. Culpepper. The clothing of the defendant was found to contain human blood stains.

In the bifurcated trial the defendant, David D. Martin, was found guilty of the four murders. The jury also found aggravating circumstances in that the defendant created a risk of death or great bodily harm to more than one person and that the murders were committed in an especially heinous, atrocious and cruel manner. The defendant was sentenced to death for each of the four murders.

ARGUMENTS IN OPPOSITION TO PETITIONER'S APPLICATION FOR WRITS

1.

Whether the affirmance of the petitioner's death sentences by the Louisiana Supreme Court without any consideration of

one of the factors upon which the jury based its sentence recommendation contravenes the Eighth and Fourteenth Amendments because such limited appellate review fails to minimize the risk of arbitrary and capricious action by the sentencing jury.

The jury found that the four murders that the defendant was convicted of were committed under circumstances that created a risk of death or great bodily harm to more than one person and that the murders were committed in an especially heinous, atrocious, and cruel manner.

Aggravating circumstances in the State of Louisiana are, among others:

> ". . . . . .
>
> "(d) The offender knowingly created a risk of death or great bodily harm to more than one person . . . . . .
> "(g) The offense was committed in an especially heinous, atrocious, or cruel manner." Louisiana Code of Criminal Procedure Article 905.4.

Thus the defendant was sentenced to death for each murder.

The Louisiana Sentencing Procedure in capital cases is a bifurcated trial, where the jury, in the sentencing phase considers aggravating and mitigating circumstances, then makes a binding recommendation on the judge as to whether or not the defendant will be sentenced to death. Louisiana Code of Criminal Procedure Article 905 through 905.8. Then the Louisiana Supreme Court reviews the sentence to see if it was excessive. See Rule 28 of the Louisiana Supreme Court.

The Louisiana Statute is similar to the Florida Death Penalty Statute and the Georgia Death Penalty Statute. See *Proffit v. Florida*, 96 S. Ct. 2960, 428 U.S. 242, 49 L. Ed. 2d 913 (1976); and *Gregg v. Georgia*, 96 S. Ct. 2909, 428 U.S. 153, 49 L. Ed. 859. The Louisiana Death Penalty Statutes were a reaction of the Louisiana Legislature to *Furman v. Georgia*, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972); and *Roberts v. Louisiana*, 428 U.S. 325, 96 S. Ct. 300, 49 L. Ed. 974 (1976).

When the Louisiana Supreme Court reviewed the sentencing of the defendant, the Court found that the actions of the defendant knowingly created a risk of death or great bodily harm to more than one person; but did not rule upon the question of whether or not the murders were committed in an especially heinous, atrocious, or cruel manner. *State of Louisiana v. David D. Martin*, 376 So. 2d 300 (La. 1979) at pages 311 and 312.

It is the failure of the Louisiana Supreme Court to rule upon whether or not the murders were committed in an ". . . especially heinous, atrocious, or cruel manner," (Louisiana Code of Criminal Procedure Article 905.4 (g)) that the defendant complains. The Louisiana Supreme Court stated:

> "Having concluded that the jury correctly found one statutory aggravating circumstance to exist, it was within the power of the jury to consider the death penalty. *State V. Sonnier*, supra. The requirement that at least one statutory aggravating circumstance be found is to insure that the jury's discretion is 'controlled by clear and objective standards so as to produce non-discriminatory application.' *Gregg V. Georgia*, supra., 96 S. Ct. at 2936. We therefore, deem it unnecessary to inquire whether the jury

could have correctly found that the offense was committed in an especially heinous, atrocious, or cruel manner." *State V. Martin*, 376 So. 2d 300 (1979) at page 312.

The Louisiana Supreme Court clearly complies with the requirements of *Gregg v. Georgia*, op. cit. supra. It viewed the case and found that there was enough evidence to justify a death sentence. To now say that maybe the jury might have done differently, if, is to invade the province of the jury. The decision in this case was made with the sentencing authority for statutory reasons and is then reviewed by a court with a statewide jurisdiction which can assure consistency, fairness, and rationality. As was done in this case, the death penalty will not be wantonly or freakishly imposed. See *Proffit v. Florida*, 428 U.S. 242, 49 L. Ed. 2d 913, 96 S. Ct. 2960 (1976) at page 2970.

Nevertheless let us examine the crime and see if it was committed in an ". . . especially heinous, atrocious, or cruel manner." Louisiana Code of Criminal Procedure Article 905.4 (g). The facts of what happened are best expressed by extracts from the testimony of the people to whom the defendant confessed. After he murdered Bobby Todd, Terry Hebert, Sandra Brake and Anna Tierney, the defendant David Martin left the scene and told of the murder to Chester Golden.

"Q. What did he tell you while you were driving if anything?

"A. The first thing he said when I got in the car was, 'Can you keep a secret? I've got something I need to tell you. I've got to tell somebody.'

"Q. So what did you tell him?

"A. I said, 'Yes, I can keep a secret.' I assumed he had

something to tell me about Gloria that he didn't want Fran to hear. And as soon as I said that he said, 'I just killed four people.' And I said 'What are you talking about?' And he said, 'I just killed two guys and two chicks.' I said, 'What do you mean, David? What are you talking about, man?' He said, 'I did it. I went out to the Gold.' He said, 'I parked my car down from the place so I would look like a hitchhiker. I walked up to the door, knocked on it, asked if I could speak to Bobby.' He said, 'Someone let —' he didn't tell me who, he said, 'They let me in.' He said, 'I was in the trailer. Bobby came walking up toward me.' He said, 'I had my shirt out of my pants, and I had the pistol in my pants.' He said, 'When Bobby walked up I pulled the gun on him.' He said, 'Bobby said, "Do you want money?" ' He said, 'He reached into his pockets and pulled out two rolls of money and put them down on the counter — table —' something. I don't remember which he said. He said, 'No, I don't want your money. I just want you to know my name.' He said, 'And I shot him twice.' He said, 'He fell down.' He said, 'He didn't die immediately.' He said, 'He died hard.' He said, 'I shot one of the girls in the stomach, and she didn't die.' He said, 'They just wouldn't die.' And he said, 'She asked me to — she was hurting. She said, "Please kill me. Please finish it." ' He said, 'And I shot her in the head and finished her.' I said, 'But, David, why did you — I understand you were mad at — you know, why the — why did you kill the chicks, why the women?' He said, 'Once I started shooting there was no stopping.' He said he picked up the money that Bobby had taken out of his pocket to make it look like a robbery. I said, 'David, how do you expect to get away with something like this, man?' He said that that day he had taken Gloria out to eat pizza and they drank some

beer. He said he had drank beer. So she wouldn't think he was upset with them splitting up. He said he had taken her out to Bobby Todd's trailer that day. I think he said Bobby was asleep and he brought her back home, then. He said, 'I didn't touch anything.' He said, 'No one saw me.' He said, 'I'll just stick to my story, keep my mouth shut, and I'll get off.' I said, 'David, everybody knows you had a grudge against Bobby Todd.' He said, 'I figure they will pick me up, but I'm just going to keep my mouth shut.' He said, 'They just don't have any proof.' About that time we were on the way back to my house, and as we turned, took a left on the bridge to go across the bayou to come to my house, I heard what he was saying but at a certain point it just stopped, it just didn't go any further. I could see what he was saying, but I just wouldn't accept it, you know. It was — just — I could hear him, I could see he was upset, and he was describing things, you know. I just — you know, I just couldn't believe it. When we took the left to come to my house, I asked him how those rounds were that he had gotten from Tommy worked in the pistol, and he said they were real hard to jack out. He said, 'I had to bang it to eject the rounds and get them out.' And Tommy had mentioned that those loads were —"

Then the defendant told Pamela Wilson:

"Q. Did you have a conversation with him there?

"A. I did.

"Q. What did he tell you?

"A. He told me that they were all dead, and I asked him who? He said, 'Bobby Todd, Terry, and two chicks.'

And then he covered his face with his hands. And I questioned him you know, 'What?' And he explained to me that he had killed them that night, and he didn't want to tell me about it too much because he said it was gory, and we talked a little bit about it, not too much, and then we returned to Raymond's house where we stayed for a while. I went to the store. When I came back, David and I returned to the other side where I was cooking, and it was then that I got what I would call the details of how he went about doing it.

"Q. Do you recall what those details were?

"A. He said that he went to the trailer, Bobby opened the door, he had the gun in his hand, and that Bobby took his money out, said 'Take my money if that's what you want.' He said, 'No. My name is David Martin,' and he shot him in the chest.

"Q. Did he say how many times he shot him?

"A. For sure once, and I think he said twice, but I'm not positive.

"Q. Did he say if anybody else was in the trailer?

"A. Yes. He said at first he thought that Bobby was alone, and he was glad. But then there was Terry and the two girls there. And that he shot Terry in the back, and that he shot Sandy. Sandy didn't want to die. She wanted to live, and she wouldn't die, so he had to shoot her in the head, is what he said. I'm not sure how he shot Anna or when in the sequence, but I know that Bobby Todd was first and that Terry, I do believe, was second. And that he took some money, and then with the gun he found a gar-

bage bag on the side of the road, threw the gun and I believe the money also in it and threw it into a bayou.

"Q. Did he tell you which bayou?

"A. No. He didn't. He just said, 'In the bayou.'

"Q. What was your reaction to this?

"A. Basically disbelief. I really didn't understand it. I told him it was senseless, and he said he was very ashamed of himself for what he had done. But I—it was basically just disbelief and a lot of horror, the whole incident, and I really didn't believe that it had actually happened until the police actually came to the house that evening."

Then Donna Gary:

"Q. And where did you speak to David?

"A. In the front room. It's away from the living room.

"Q. What did he say to you when he came over?

"A. Well, he asked me if he could talk to me, and he said he had something he had to talk to me about, you know, just me. So I said okay. And he told me that he had done it, and I asked him what he had done, and he said he had shot Bobby Todd, he said, and he killed three innocent people. And from then on he said a few other words and he—

"Q. Like what, when you say he said a few other words?

"A. I'm not really sure what else was said approximately, you know, what right after the other, the whole con-

versation, but I did get that part. And I think he probably said he didn't know what to do or something of that sort. He was visibly upset, that's for sure.

"Q. Did he give you anything?

"A. Yes, sir. He did.

"Q. What did he give you?

"A. Some shells of some kind, gun shells.

"Q. Loaded gun shells or empty gun shells?

"A. No, empty. Casings I think you call them.

"Q. Did he tell you anything when he gave them to you?

"A. Well, he asked me to do something with them, get rid of them or something. I threw them in the garbage.

"Q. What did you do with these shell casings?

"A. I put them in my garbage can, garbage bag.

"Q. Did he say why he had killed these people?

"A. Not — I don't believe he told me at that time. I think I kind of figured it had something to do with —

"Q. He did not tell you then at that time?

"A. I don't think so.

"Q. Did those shell casings stay in your garbage?

"A. Until the day after. Then I called Major Authement, the Sheriff's Office in Houma, and I told them that I had something to do with the David Martin case, he had already been arrested, and they came over, and I took them out the garbage and I gave them to Major Authement.

"Q. Did he relate to you at that time the sequence of how the people were shot and who was shot where and in what manner?

"A. No, sir. He didn't tell me anything at all except that he had shot Bobby and three innocent people. That's all he said. He said that it was too gory or it wasn't — he didn't want to discuss it, something like that. But he didn't tell me anything but that."

And finally Raymond Rushing:

"Q. On Sunday, August 14, 1977, did the defendant, David Martin, at about 9:45 P.M., did you speak to David Martin while he was in the bathtub?

"A. Yes, sir.

"Q. How did that come about?

"A. David said he wanted to talk to me. I asked him what, and then he said he had killed Bobby Todd, and I told him I didn't want to know nothing else.

"Q. That was all he told you?

"A. Yes, sir."

And Kenneth Boudreaux:

"Q. What was the nature of your conversation with Mr. — What did Mr. Martin say to you?

"A. At Miss Gary's house?

"Q. Yes.

"A. Something had to do with what he had that night or that day, something having to do with that.

"Q. What did he tell you?

"A. He told me that he would like to talk to me about something. At that time he appeared a little shooken up, quite hyperactive.

"Q. What do you mean he was shook up?

"A. Quite excited, I guess you could put it like that. Again, like I said a bit hyperactive.

"Q. Did he tell you anything at that time?

"A. He told me that he did it.

"Q. Did he say what he did?

"A. He said that he shot Bobby Todd and three innocent people.

"Q. Did he say anything else?

"A. That's the only thing that stuck in my head.

"Q. Did he describe the act?

"A. He said it was a bit gory, a bit gruesome to really define."

What David Martin did was much more brutal, more especially heinous, atrocious, or cruel than the crime committed

by Charles William Proffit in *Proffit v. Florida*, op. cit. supra. His death sentence was affirmed, we ask the same in this case.

2.

Whether the affirmance of the petitioner's death sentence by the Louisiana Supreme Court violates the Eighth and Fourteenth Amendments when that Decision was based in part on a factor that was neither found by the jury at petitioner's trial nor listed as an aggravating circumstance in the capital sentencing law in effect at the time of the trial.

This was not done in this case. The section quoted from the Louisiana Supreme Court decision by the defendant is only partly quoted. Let us quote the whole paragraph:

> "The defendant was convicted of killing four people in a brutal, savage manner. The evidence showed he lay in wait to kill Todd for two successive evenings before finally getting to him on the third night. Martin killed three people to prevent them from being able to disclose that he was Todd's killer. It is clear from a reading of our Capital Sentencing Law that killing a victim in order to prevent that person from being able to report a separate crime (a kidnapping, an armed robbery, a separate murder, et cetera) is strictly condemned." *State v. David D. Martin*, 376 So. 2d 300 (1979) at page 313.

The Court was simply shocked at what the defendant had done. It and society in general have a right to be shocked. Judges have a right, even a duty, to be shocked. The above quoted section of *State v. David D. Martin*, op. cit. supra., is the last part of the opinion and is long after the Court ceased

to consider aggravating and mitigating circumstances. The quote is found at the end of the decision under the heading of "Comparison with Other Cases." *State v. David Martin*, 376 So. 2d 300, at pages 312 and 313 (La. 1979). If this quote is to be considered as a part of the findings of aggravating and mitigating circumstances, then could it be considered as a finding of an especially heinous, atrocious, or cruel manner? A fair reading of the case shows the quoted section to be part of the judge's conclusion of the opinion, a summing up, nothing more.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Honorable Supreme Court of the United States should deny petitioner's Application for Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE

It is hereby certified that a copy of the foregoing response was this day served upon Richard E. Shapiro, Attorney for Petitioner, 34 Camp Street, Suite 708, New Orleans, Louisiana 70130, by depositing same in the United States mail, postage prepaid.

THIBODAUX, LOUISIANA this _____ day of June, 1980.

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